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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD M. CHASKIN, Plaintiff and Appellant, v. MARK V. BRAJNIKOFF, Defendant and Respondent.	B275364 (Los Angeles County Super. Ct. No. BC354847)

APPEAL from orders of the Superior Court of Los Angeles County. Mark A. Borenstein, Judge. Affirmed.

Richard M. Chaskin, in Pro. Per., for Plaintiff and Appellant.

Mark V. Brajnikoff, in Pro. Per., for Defendant and Respondent.

Richard M. Chaskin (Chaskin) appeals the denial of two motions he filed below: (1) a motion seeking an order either dismissing a June 17, 2008 judgment (2008 Judgment), owned by Mark Brajnikoff (Brajnikoff) or declaring it unenforceable; and (2) a motion against Brajnikoff for comparative indemnification or statutory contribution.

We find no error and affirm.[1]

FACTS

The facts of this case are confusing and complicated. We have opted to limit our statement of the facts because only a few of them are salient.

Brajnikoff's Employment Until 2012

Brajnikoff worked as a law clerk for Andrew L. Krzemuski at the law firm of Schlossberg & Krzemuski.

2008 Judgment

Chaskin, Andrew L. Krzemuski and others worked together on *Harris v. 3075 Wilshire LLC* (Super. Ct. Los Angeles County, 2008, No. BC354847 [nonpub. opn.]). In 2008, the trial court issued a monetary judgment to enforce an award of $21,600 in discovery sanctions against, inter alia, Chaskin as well as the law firm of Schlossberg & Krzemuski (2008 Judgment). The 2008 Judgment was in favor of one of the defendants in the case, Titan Water Technology, Inc. (Titan).

Brajnikoff's Subsequent Employment

After Andrew L. Krzemuski died in 2012, Brajnikoff went to work as a law clerk for Julie C. Lim (Lim).

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[1] The notice of appeal raises other issues but Chaskin has not provided any argument as to those issues. Accordingly, we deem them abandoned.

Assignment of the 2008 Judgment

Subsequently, on April 21, 2015, Titan assigned the 2008 Judgment to Brajnikoff.

Notice of Assignment of the 2008 Judgment; Disqualification of Lim.

On April 22, 2015, Lim filed a notice that Titan had assigned the 2008 Judgment to Brajnikoff. Sometime thereafter, Chaskin successfully moved to disqualify Lim as Brajnikoff's attorney. Per the trial court's order, it perceived that there was "some semblance of an attorney-client relationship between [Lim] and [Chaskin][.]"[2]

Motion for Comparative Indemnification or Statutory Contribution; Notice of Ruling

Chaskin filed a motion for comparative indemnification or statutory contribution from Brajnikoff and others. In part, Chaskin argued that Brajnikoff and his former employer, Andrew L. Krzemuski, caused the discovery sanctions upon which the 2008 Judgment was based, and that Brajnikoff and Andrew L. Krzemuski's Estate should be "found liable for all or most of the subject discovery sanctions."

On April 13, 2016, Chaskin filed a document entitled "Counter-Notice of Ruling" stating that the trial court "ruled that Chaskin could not be indemnified or seek contribution for payment of sanctions and as such the [trial court] denied the

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[2] Chaskin's disqualification motion stated that Lim previously represented him. The nature of her representation was not described. Presumably that representation was unrelated to the case at bar.

motion" for comparative indemnification or statutory contribution.[3]

Motion for an Order Dismissing the 2008 Judgment or Declaring it Unenforceable

On February 3, 2016, Chaskin filed a motion which argued, inter alia: (1) Lim purchased the 2008 Judgment, not Brajnikoff; (2) Lim did so with intent to sue on it, making the purchase a criminal violation of Business and Professions Code section 6129;[4] (3) Lim was guilty of deceit or collusion, or consented to Brajnikoff's deceit or collusion, with intent to deceive the trial court or Chaskin by falsely claiming that inflated amounts were due on the 2008 Judgment, and Lim thereby criminally violated section 6128, subdivision (a); (4) Lim violated Rules of Professional Conduct, rule 3-310; (5) Lim and Brajnikoff breached their fiduciary duties of confidentiality and loyalty; (6) Brajnikoff's wrongdoing caused the 2008 Judgment; and (7) as a result of the foregoing, the 2008 Judgment should be dismissed or declared unenforceable.

In his opposition, Brajnikoff maintained that he was the purchaser of the 2008 Judgment, not Lim.

Brajnikoff submitted a declaration stating that on March 25, 2015, he sent an e-mail to an attorney named Theodore E. Bacon (Bacon) with an offer to purchase the 2008 Judgment from Titan; on April 6, 2015, Brajnikoff asked Lim to purchase a $4,000 cashier's check and said he would reimburse

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[3] The parties do not cite to a court order ruling on the motion. It does not appear that any such ruling exists in the appellate record.

[4] All further statutory references are to the Business and Professions Code unless otherwise indicated.

her the next day;[5] on April 7, 2015, he paid Lim $2,975 in cash, and she signed a receipt; Lim owed him $1,025 for "clerking services, which applied to the balance"; and on April 7, 2015, he signed an agreement with Bacon to purchase the 2008 Judgment. Attached to the declaration was the e-mail to Bacon, a receipt signed by Lim for $2,975, the purchase agreement signed by Bacon and Brajnikoff, an assignment of the 2008 Judgment, and a corrected assignment. In the e-mail to Bacon, Brajnikoff stated, "I purchase judgments and then attempt to enforce collection."

On April 29, 2016, the trial court issued a minute order denying the motion "for the reasons provided in open [c]ourt during [oral] argument."

This appeal followed.

DISCUSSION

I. Denial of the Motion to Dismiss the 2008 Judgment or Declare it Unenforceable.

Chaskin argues that the 2008 Judgment should be dismissed or declared unenforceable primarily based on section 6129. In the alternative, he contends it should be dismissed or declared unenforceable based on either section 6128 or a violation of the attorney-client privilege/breach of fiduciary duty by Brajnikoff, a nonattorney.

We address each of these arguments below.

A. Section 6129.

This appeal calls for Chaskin to identify the law giving the trial court the power to dismiss the 2008 Judgment or declare it unenforceable. He cites nothing supporting dismissal of the

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[5] The record implies that this cashier's check was used to purchase the 2008 Judgment.

2008 Judgment, and we deem that argument abandoned. Implicitly, he suggests the 2008 Judgment is unenforceable by Brajnikoff or Lim based on section 6129. It is to this issue we turn. To the degree we are called upon to determine questions of law, our review is de novo. The trial court's findings must be upheld if they are supported by substantial evidence. (*In re Collins* (2001) 86 Cal.App.4th 1176, 1181.)

Section 6129 provides in part: "Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor." This "statute does not declare that any assignment coming within its terms is void, nor does it forbid an action thereon." (*Martin v. Freeman* (1963) 216 Cal.App.2d 639, 642.) Presumably, however, the statute can be raised as a defense in an action to recover on the debt that was purchased. (*Ibid.*) "The purpose of the statute . . . is to prevent the officious fomenting of litigation. [Citation.] The outright purchasing by attorneys of claims which perhaps otherwise would never be sued upon obviously would tend to stir up a good deal of litigation if it were permitted[.]" (*Id.* at p. 643.)

The statute allows an attorney with no intent to sue on a judgment to purchase it and later assign it to a nonattorney. (*Crocker Citizens Nat'l Bank v. Knapp* (1967) 251 Cal.App.2d 875, 883.) Case law indicates, however, that this rule might be nullified if there was "fraud or collusion" between the attorney and assignee. (*Ibid.*)

It appears that Chaskin believes Lim violated section 6129 because: (1) the assignment to Brajnikoff was a sham, she retained financial interest in the 2008 Judgment, and she intended to sue on the debt when it was acquired; or (2) she did

not have a financial interest but nonetheless intended to sue on it for Brajnikoff. Chaskin cites *Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1255, which held that a party to an illegal contract """"cannot come into a court of law and ask to have his illegal objects carried out. . . ."""""

Chaskin's position fails for many reasons.

First, section 6129 does not render a debt void or unenforceable. At most, the statute can be raised as an affirmative defense in a lawsuit against the debtor. In other words, the statute can be raised a shield, not as a sword. Here, Chaskin is not raising it as an affirmative defense in a lawsuit against him. Rather, he is seeking to proactively nullify a lawfully entered judgment. He cites no law supporting this application of the statute.

Second, there is no indication in the record that Brajnikoff and/or Lim filed a lawsuit against Chaskin. Rather, the record suggests that Brajnikoff was satisfied with using liens, abstracts of judgments and any other related methods to collect the debt. Section 6129 does not prevent an attorney from purchasing a debt with the intent to collect it.

Third, the initial prong of section 6129 is the purchase of a debt by an attorney. Chaskin maintains that the trial court found that Lim purchased the 2008 Judgment. To support this claim, he cites to the "Counter-Notice of Ruling" that he filed.[6]

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[6] The "Counter-Notice of Ruling," which was dated April 8, 2016, did state that the trial court ruled that Lim purchased the 2008 Judgment. But the Counter-Notice also stated that the hearing would be on April 20, 2016. As indicated by orders actually in the appellate record, the trial court did not rule until April 29, 2016. It is unclear why Chaskin believes there was an earlier ruling.

Chaskin offers no authority permitting him to rely on a party's notice of ruling instead of the actual ruling. This is fatal to his assertion. Notably, an appellate court has no "responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.) Thus, we have not endeavored to justify Chaskin's record citation on our own.

Fourth, Chaskin maintains that the unrefuted evidence showed that Lim purchased the 2008 Judgment with intent to bring suit. But his own opening brief establishes otherwise. He states that "Brajnikoff provided his own, self-serving declaration along with a purported 'receipt' on his computerized letterhead in an attempt to refute that [Lim] purchased the judgment, directly or indirectly, with intent to bring suit[.]" Thus, Chaskin concedes competing evidence. His real complaint is that the "trial court . . . should have disregarded . . . Brajnikoff's declaration and the purported receipt." Presumably, then, Chaskin suggests that the trial court found that Lim did not purchase the 2008 Judgment with intent to sue on it, and that this decision is not supported by substantial evidence. As we have indicated, while Chaskin could use section 6129 as a shield, he could not use it is a sword, so this issue is moot.

For the sake of being complete, we iterate that when "a factual conclusion is attacked as lacking evidentiary support, our power is limited to determining whether the record contains substantial evidence, contradicted or uncontradicted, to support the decision. [Citation.] The testimony of a single witness is sufficient. [Citation.] All conflicts, in either the evidence or the inferences to be drawn therefrom, are to be resolved in favor of the prevailing party. [Citation.]" (*State Farm Fire & Casualty*

Co. v. Jioras (1994) 24 Cal.App.4th 1619, 1625–1626, fn. omitted.) "[A]n appellate court may not reweigh the evidence and may not reject evidence as lacking credibility unless it is physically impossible [citations] or inherently implausible [citation]." (*Id.* at p. 1626, fn. 5.) Brajnikoff's declaration indicated that he solicited the purchase of the 2008 Judgment, asked Lim to advance the money, and reimbursed her in a manner that settled the debts between them. In his e-mail to Bacon, Brajnikoff said his intent was to collect the debt. This evidence must be coupled with the fact that Brajnikoff never filed a lawsuit. When viewed favorably to Brajnikoff, this evidence and its attendant inferences support a finding that Brajnikoff was the ultimate purchaser of the 2008 Judgment, and that Lim did not purchase it with intent to sue on it. Ignoring Chaskin's theories and conflicting evidence, and recognizing that the trial court was the arbiter of credibility, the question is whether the version of events impliedly found by the trial court is physically impossible or inherently implausible. The answer is no.

Fifth, Chaskin is asking us to relieve him of the obligation to pay lawfully ordered sanctions and reward his obstructionist tactics. It is therefore ironic that he complains about the tactics of Lim and Brajnikoff. We have "the inherent power, under the 'disentitlement doctrine,' to dismiss an appeal by a party that refuses to comply with a lower court order." (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229.) "The doctrine 'is based upon fundamental equity and is not to be frustrated by technicalities.'" (*Id.* at p. 1230.) This appeal could easily be dismissed on this ground.

B. Section 6128.

Secion 6128 provides: "Every attorney is guilty of a misdemeanor who either: [¶] (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party. [¶] . . . [¶] Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both."

Chaskin suggests that the 2008 Judgment should be nullified if Lim violated section 6128. He cites no law in support of this argument and we deem it waived. "'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]'" (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal. App.4th 857, 862.)

C. Violation of the Attorney-Client Privilege/Breach of Fiduciary Duty.

Summed up, Chaskin argues that "Brajnikoff[,] in his capacity as a law clerk for . . . Lim[,] obtained confidential attorney-client privileged information from . . . Chaskin, and should not be permitted to retain the financial benefits [Brajnikoff] received as a result of that information." Chaskin provides plethora legal citations and arguments, but they amount to nothing consequential because he fails to cite law permitting a court to nullify a judgment based on the misconduct that he ascribes to Brajnikoff. Accordingly, we deem this argument waived.

II. Denial of the Motion For Comparative Indemnification or Statutory Contribution.

Chaskin argues that the trial court improperly denied his motion on the ground that he was not entitled to comparative indemnification or statutory contribution for an award of sanctions. In support, he cites to his own notice of ruling rather than an actual ruling. As explained before, we have not been cited authority permitting this practice. Presuming that the trial court denied the motion, and that the notice states the trial court's reasoning, Chaskin fails to cite law establishing it as error. The result is waiver of the argument. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1096–1098.)

To be complete, we highlight that Chaskin cites law regarding the allocation of damages among tortfeasors and then concludes without analysis that he established the elements. He cited no law establishing that lawyers or law firms that are ordered to pay discovery sanctions are tortfeasors, or that they can claim comparative indemnification or statutory contribution from each other or third parties. His argument on this score is defeated by is deficiencies.

III. Nonappealed Order.

At one point in the opening brief, Chaskin complains about a March 4, 2016 order, by which the trial court allegedly granted Brajnikoff's ex parte application to quash Chaskin's subpoena duces tecum and deposition notice. Chaskin's notice of appeal was filed on June 6, 2016, more than 60 days after March 4, 2016. Thus, depending on when and if notice of the order was served, it is possible that notice of appeal was too late. (Cal. Rules of Court, rule 8.104(a)(1) [time to appeal between 60 and 180 days].) More importantly, the notice of appeal does not refer

to a March 4, 2016 order. Consequently, we lack jurisdiction to engage in the requested review. (Cal. Rules of Court, rule 8.100(a)(1), (2); *Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.)

DISPOSITION

The orders are affirmed. Brajnikoff shall recover his costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ